IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

WEDNESDAY, THE 5TH DECEMBER 2007 / 14TH AGRAHAYANA 1929

MFA.No. 905 of 2001(C)

WCC.207/1997 of WORKMEN'S COMPENSATION COMMISSIONER, KANNUR .
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APPELLANT: OPPOSITE PARTY II

THE NEW INDIA ASSURANCE CO. LTD.,
TEMPLE ROAD, PAYYANNUR,
PIN 670 307, REP.BY ITS ASST.
ADMINISTRATIVE OFFICER,
REGIONAL OFFICE, KANDAMKULATHY TOWERS,
M.G.ROAD, KOCHI-1 16.

BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL

RESPONDENTS: APPLICANT: OPPOSITE PARTY I
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1. K.MUHAMMEDKUNHI, S/O. ABDULLA,
KUNDODUKAM HOUSE, BELOOR VILLAGE,
P.O. ATTANGANAM,
ANANDASRAM VIA, HOSDURG TALUK.

2. K.KUNHIRAMAN, S/O. K.P.KUNHIRAM,
CHANDARA HOUSE, P.O., MANIYAT,
VIA TRIKARUPUR, HOSDURG TALUK.

BY ADV. SRI.T.MADHU - R1

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 05/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

MFA.No .905/2001

ORDER ON CMP. NO.7049/2001 IN MFA. 905/2001

DISMISSED

05.12.2007 **SD/- J.B.KOSHY, JUDGE**

SD/- K.HEMA, JUDGE

/TRUE COPY/

P.S. TO JUDGE

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J.B. Koshy & K.Hema, JJ.

M.F.A.No. 905 of 2001

Dated this the 5th day of December, 2007

Judgment

Koshy,J.

First respondent in this appeal filed an application for compensation before the Commissioner for Workmen's Compensation contending that he sustained serious injuries in an accident during the course of employment. He was aged 33 years and was having a monthly income of Rs.2,500/-. The wound certificate shows that he sustained the injuries as a result of the accident. He claimed an amount of Rs.2,00,000/-. The Commissioner calculated an amount of Rs.98,856/- with interest at the rate of 12% from the date of accident till the date of passing the award. Interest payable till the date was Rs.61,291/- and thus total compensation was Rs.1,60,147/-. It is also stated that if the amount is not deposited within the time, the claimants are also entitled to get interest at the rate of 12% for default till deposit. Disability was assessed at 40%. The claimant who was examined as AW1 gave evidence that he was a driver by profession and because of the accident, he is unable to drive and he is entitled to compensation for

100% loss of earning capacity. AW2 doctor who issued the medical certificate deposed that he had disability of 50%. He has ankylosis of Rt. knee joint following the injury and infection. He deposed that the disability was assessed under the McBride's scale, but, considering the percentage of disability of a workman, it can be reduced to 45%. Under section 4 (1) (c) (ii) of the Workmen's Compensation Act, Commissioner has to assess the compensation on the basis of the certificate issued by a qualified medical practitioner assessing loss of earning capacity. The Commissioner has assessed the compensation on the basis of the loss of earning capacity assessed by the medical practitioner. Compensation payable under the Workmen's Compensation Act for loss of one leg is 90%. Here, as a result of the accident, apart from the shortening of the leg, there was mal-union and he was unable to drive. Considering these aspects and considering the loss of earning capacity assessed by the doctor, the Commissioner fixed 40% as the loss of earning capacity. We see no ground to interfere in the same.

2. Commissioner has taken Rs.2000/- as the monthly income as the maximum salary that can be taken into consideration at the time of accident though workman was earning more at the time of accident. Thus, compensation was calculated as follows:

$$2000 \times \frac{60 \times 40}{100 \times 100} \times 205.95 = \text{Rs.}98,856/-.$$

3. We note that the Commissioner has granted 12% interest from the date of application till the date of the award and thereafter, again, awarded interest at the rate 12% from the total amount including interest from the date of award till deposit. It is true that statutory interest payable is 12% from the date of application to the date of payment as compensation fell due when the accident occurred as held by the Supreme Court in KSEB v. Valsala (1999 (3) KLT 348 SC) as well as Pratap Narain Singh Deo v. Srinivas Sabata and another (AIR 1976 SC 222) and Maghar Singh v. Jashwant Singh ((1998) 9 SCC 134). But, Commissioner cannot add interest upto the date of award to the compensation amount and then direct to pay 12% interest from the total award. Here, the Commissioner calculated compensation payable as Rs.98,856/- which is in accordance with the provisions of the Act. Thereafter, the Commissioner calculated interest till the date of award as Rs.61,291/- and interest was added up and total amount awarded was Rs.1,60,147/- and then awarded 12% interest on Rs.1,60,147/- from the date of award till the date of deposit. This is incorrect. This will amount to awarding interest on interest. Compensation

payable will be Rs.98,856/- with 12% simple interest per annum from the date of application till the date of deposit. Here, the amount was deposited on 12.7.2001. The appeal is disposed of modifying the award accordingly.

J.B.Koshy
Judge

K. Hema
Judge

vaa

J.B. KOSHY AND
K.HEMA,JJ.

M.F.A. No. 905 of 2001

Judgment

Dated:5th December, 2007